

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0592P**

**Withholding Tax  
Month of November 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on the late filing of the deposit due for the month of November 1998.

The taxpayer is a producer, agent, and shipper of metallurgical coal, coke, coke breeze, dry coke, petroleum coke, and other carbon products. The taxpayer provides worldwide service to all industrial carbon markets. The taxpayer is headquartered outside of Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer erred in determining the due date of the Indiana state tax. The error resulted in late deposits for October 1998 and November 1998. The error was corrected so future deposits would be made timely. As the error was not the result of willful negligence, the taxpayer argues penalty should be waived.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of Indiana tax regulations. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.